**Institutional v ad-hoc arbitrations**

The nature and relative merits of institutional and ad-hoc arbitrations.

Once the decision has been made to opt for arbitration rather than litigation, the parties must decide on the type of arbitration they wish to have.

An institutional / administered arbitration is a proceeding where the parties designate an institution to administer the arbitral process in accordance with the institution’s arbitration rules. The parties then follow the rules of the institution in conducting the arbitration (although some institutions will also administer arbitrations under other sets of rules such as the UNCITRAL rules (more on this later). This makes the process more predictable and easier to follow.

In an institutional arbitration:

- An arbitration is generally only allowed to commence through the lodging of a dispute with the institution in question.

- Depending on the parties’ agreement on an appointment mechanism for the tribunal, the institution may be involved in appointing or choosing arbitrators. The institution will usually have a procedure for challenging arbitrators.

- The institution will usually have oversight over the costs and expenses of the arbitration. Many institutions even determine and fix the final costs of the tribunal.

- The institution may scrutinise or review awards before they are released to the parties. Some institutions provide this service mandatorily, but some do not.

The advantages of an institutional / administered arbitration are those of clarity, certainty, and reliability. Institutional rules provide specific deadlines in the early stages of an arbitration before a tribunal is constituted. The institution provides administrative support and ensures that the tribunal maintains momentum in the arbitral process, particularly in ensuring that the tribunal writes and issues its award within a reasonable timescale. However, the parties will pay a fee to the arbitral institution for their services.

By contrast, an ad-hoc / unadministered arbitration traditionally requires the parties to select the arbitrator(s), and the rules and procedures themselves. In this way, parties are able to carry on with their arbitration without the assistance of an arbitral body.

The advantages of ad-hoc / unadministered arbitrations were seen as flexibility, cost (no admin-fees) and speed (reduced bureaucracy). The disadvantages were that ad-hoc / unadministered arbitration was traditionally seen as unpredictable, both in relation to costs, timeframe and success. The failure of one or both parties to cooperate at the early stages of the arbitration in the tribunal appointment procedure can result in the need to seek recourse from the courts to constitute the tribunal. Once the tribunal is in place it is often suggested that, due to the lack of institutional support, ad-hoc arbitration can be more vulnerable to delay tactics and obstruction by an unwilling opponent which can also increase costs and delay the process. There can also be additional cost in paying highly qualified arbitrators to carry out administrative functions that would otherwise be delivered by an institution.

The distinctions between an institutional / administered arbitration and an ad-hoc / unadministered arbitration are fluid and blurring. When constituted, an ad-hoc / unadministered tribunal, in consultation with the parties, will often decide to adopt standalone arbitration rules to govern proceedings, or even approach an institute to administer the arbitration. If necessary, the parties can still designate an arbitral institution as an appointing authority to help them constitute the tribunal, after which the tribunal and parties will then determine the procedure. It may also be possible to adopt an institution’s arbitration rules to govern the arbitration but not utilise the institution itself. However, this can present challenges. Some institutions expressly state that this is not possible and most sets of rules rely on the institution to make certain decisions. Parties to an ad-hoc arbitration can also decide, part way through, to change to an administered arbitration if proceedings stagnate.

Ad-hoc arbitration is particularly popular in certain sectors, including shipping, commodities and construction. Through their own specific organisations, a number of these sectors have developed arbitration rules tailored to their particular industries, such as the LMAA Terms for Maritime Arbitration and the CIMAR Construction Industry Model Arbitration Rules. Not being an institution, the LMAA does not administer arbitrations and so no administrative fees are charged. For a one-off fee, the LMAA can assist with the appointment of arbitrators.

**Arbitral institutions**

Whilst we may mention various leading institutional rule provisions as examples in topics, we are going to focus on the London Court of International Arbitration (‘LCIA’) and the United Nations Commission on International Trade Law (‘UNCITRAL’) Rules.

The LCIA is one of the world’s leading international institutions for commercial dispute resolution. The LCIA provides administration of arbitrations and other ADR proceedings, regardless of location, and under any system of law. The LCIA also regularly acts both as appointing authority in ad hoc arbitrations and as administrator in arbitrations conducted under the UNCITRAL arbitration rules.

The UNCITRAL rules “provide a comprehensive set of procedural rules upon which parties may agree for the conduct of arbitral proceedings arising out of their commercial relationship and are widely used in ad hoc arbitrations as well as administered arbitrations” (<https://uncitral.un.org/>). This is explained further below.

The “LCIA” was established in 1892. The LCIA’s updated rules came into force on 1 October 2020.

**Role of institutions in arbitration**

The LCIA’s role in an arbitration is to provide administrative support. When the LCIA “**administers**” a case, it will:

- appoint arbitrators to decide the dispute;

- monitor the progress of an arbitration. This involves things like reminding arbitrators if the parties have missed a deadline for submitting documents; and

- manage payments to arbitrators. Parties pay arbitrators for their help in resolving a dispute – the LCIA obtains the money from the parties and then organises these payments.

The LCIA has the word “court” in its name because historically the LCIA wanted to let people know that it could help them to resolve disputes, just like a traditional court.

The LCIA is not really a court in the way most people think of a court – it is not tied to any country’s legal system or government, and the arbitrators the LCIA appoints to decide disputes are not associated with the LCIA like a judge is associated with a court. Arbitrators are independent of the LCIA, appointed on a case-by-case basis, and paid by the parties rather than the LCIA.

The LCIA does, however, have a body it calls the “LCIA Court”, made up of a group of arbitration lawyers. The LCIA Court is the part of the LCIA that officially carries out various functions under the LCIA Arbitration Rules (including appointing arbitrators) and ensures that those rules are kept up to date.

**UNCITRAL**

At present, there exist four different versions of the UNCITRAL Arbitration Rules:

- the 1976 version;

- the 2010 revised version;

- the 2013 version which incorporates the UNCITRAL Rules on Transparency for Treaty-based Investor-State Arbitration; and

- the 2021 version which incorporates the UNCITRAL Expedited Arbitration Rules.

To overcome some of the problems of ad hoc arbitration, the UNCITRAL Arbitration Rules were put together by UNCITRAL’s member states. These Rules provide a detailed framework or rule book for the arbitration process and are widely used in both ad hoc and institutional arbitrations as many arbitral bodies (including LCIA) offer to administer arbitrations under the UNCITRAL Arbitration Rules in addition to their own rules. UNCITRAL itself does not provide an arbitral body to assist with the administration of the arbitration. However, the rules do provide for a default appointing authority to help the parties appoint the tribunal if the parties have not agreed on one (the Secretary-General of the Permanent Court of Arbitration (PCA)). In this capacity, the PCA will normally choose an arbitration institution appropriate for the case.

**Summary**

- The advantages of an institutional / administered arbitration are those of clarity, certainty, and reliability.

- An ad-hoc / unadministered arbitration is traditionally a proceeding that requires the parties to select the arbitrator(s), and the rules and procedures themselves.

- The line between an ad-hoc and an institutional arbitration are blurring and an ad-hoc arbitration can become an institutional one or use an institution to help appoint a tribunal or administer certain elements if the parties agree.

- The United Nations Commission on International Trade Law has published some arbitral rules which are often used in ad hoc arbitrations.

- The LCIA is one of the world’s leading international institutions for commercial dispute resolution and can administer arbitrations pursuant to its own rules or under the UNCITRAL rules.